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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/981,145   | 10/16/2001  | David H. DaCosta     | 40199-10010         | 6199             |
| 21788  | 7590        | 07/05/2006           | EXAMINER            |                  |
| RYNDAK & SURI, LLP<br>200 W. MADISON STREET<br>SUITE 2100<br>CHICAGO, IL 60606 |             |                      | WEST, PAUL M        |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 2856                |                  |

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/981,145

Applicant(s)

DACOSTA ET AL.

Examiner

Paul M. West

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 5-18 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-4 is/are allowed.
- 6) ☒ Claim(s) 1 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1 and 19 rejected under 35 U.S.C. 102(e) as being anticipated by Kobayashi et al.
2. As to claims 1 and 19, Kobayashi et al. teach a hydrogen storage container comprising: an enclosed canister 30 having a wall and an outlet 38 for charging and discharging hydrogen gas; a metal hydride material (hydrogen occluding alloy) 32 contained within the canister 30 the material being capable of absorbing and desorbing hydrogen gas, and including a porous matrix disposed within the metal hydride material for providing efficient distribution of hydrogen gas to the metal hydride material (Col. 2, lines 57-62); and a gauge 20 for directly measuring the capacity of hydrogen that remains absorbed with the metal hydride material 32 and is available for discharge through the outlet opening 38.

***Allowable Subject Matter***

3. Claims 2-4 are allowed.

***Response to Arguments***

4. Applicant's arguments filed 17 April 2006 have been fully considered but they are not persuasive.

5. Applicant has argued that Kobayashi et al. do not teach a guage for **directly** measuring the hydrogen that remains absorbed with the metal hydride. Kobayashi et al. teach a gauge which measures a change in resistance proportional to the amount of absorbed hydrogen. This measurement is direct as much as Applicant's measurement is direct, i.e. Applicant measures the amount of absorbed hydrogen by measuring a change in a variable (e.g. pressure, resistivity) that is proportional to the quantity of hydrogen absorbed. Kobayashi et al. take no more steps to measure the absorbed hydrogen than does Applicant, and therefore Kobayashi's measurement is considered direct. Furthermore, Applicant has argued that Kobayashi's requirement for a binder somehow makes the measurement process used by the gauge less direct, however the binder used by Kobayashi has nothing to do with the directness of the measurement. If Applicant wishes to claim the limitation that a binder is not used in the system then that is what should be written in the claims. The phrase "directly measuring" is not adequate to describe a system in which a binder is not used because the actual process of taking a measurement is performed in the same way, with the same number of steps, even when a binder is used.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul M. West whose telephone number is (571) 272-8590. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2856

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
DANIEL S. LARKIN  
PRIMARY EXAMINER